IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/03/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

Writ Petition No.7025 of 2001

R.K.Madhavan .. Petitioner

-Vs-

1.Presiding Officer
Industrial Tribunal, Chennai.

2.The General Manager
Ordinance Equipment Factory
Groups Clothing Factory, Avadi
Chennai-600 054. .. Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.C.Umashankar

For Respondent : Mr.M.Velusami-for R2

:O R D E R

By an award dated 31.5.1999 made in I.D.No.43 of 1995, the first respondent Industrial Tribunal, dismissed the claim of the petitioner, confirming the order of removal of the petitioner from the service of the second respondent factory with effect from 10.09.1980. Hence, the above writ petition for the issuance of a Writ of Certiorarified Mandamus and after calling for the records relating to the award of the first respondent dated 31.5.1999 passed in I.D.No.43 of 1995 and quash the same and consequently direct the 2nd respondent to pay the petitioner full back wages, grant continuity of service and all other attendant benefits.

2. The charge against the petitioner was that the petitioner was absent unauthorisedly from 28.12.1973 and reported to duty only on 21.4.1975 and thereafter it is alleged that the petitioner was not permitted to attend duty. Ofcourse, the petitioner initially preferred a claim petition in C.C.P.Nos.67/78 and 42/80, claiming arrears of salary for the period from 1.12.1973 to 30.6.1978 and 01.01.1978 to 01.06.1 980, respectively. Both the

claim petitions were dismissed on 7.2.198 0 and 24.12.1991 respectively. In the meanwhile, disciplinary action was initiated against the petitioner for unauthorised absence from duty. An enquiry was conducted and ultimately he was removed from service by an order dated 10.09.1980, invoking the provisions of Central Civil Servants (Classification, Control and Appeal) Rules, 1965.

3. Challenging the said order of removal, the petitioner raised an industrial dispute in I.D.No.43 of 1995, alleging that his absence from 28.12.1973 to 21.4.1975 was not deliberate, but due to his sickness, as substantiated from the medical certificate dated 13.2.1974. According to the petitioner, the petitioner was initially suffering from fever and dysentery, which resulted in mental disorder. But, the tribunal, disbelieving the reason offered by the petitioner, confirmed the order of removal, by an order dated 31.5.1999 in I.D.No.43 of 199 5.

4. Mr.Umashankar, learned counsel for the petitioner reiterated the submissions made on behalf of the petitioner before the tribunal.

5. Per contra, learned counsel appearing for the second respondent factory, placing reliance on the findings of the tribunal that the absence of the petitioner from 28.12.1973 to 21.4.1975 is deliberate, wanton, contends that the petitioner does not require any sympathy, particularly when the action was initiated and decision was taken by the second respondent, strictly in accordance with the regulations.

6. I have given careful consideration to the submissions made on behalf of both parties.

7. It is settled law that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that, it was in defiance of logic or moral standards. The scope of judicial review is limited to the deficiency in decisionmaking process and not the decision. But, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/tribunal, this Court cannot interfere. Further, to shorten the litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed, vide United Commercial Bank v. P.C.Kakkar, (2003), 4 S.C.C.364.

8. However, considering the reason submitted by the petitioner for his absence viz., he was not mentally alert during the period and therefore, he could not attend the office, I am of the considered opinion that the punishment of removal from service is shockingly disproportionate to the charge framed and proved substantially against the petitioner, inasmuch as, the person who lacks mental alertness cannot be complained that he did not even attend the enquiry nor joined the duty. Even then, the petitioner is not entitled for any sympathy for ordering any reinstatement or alternately

backwages for the period he was absent. Hence, finding that the impugned punishment of removing the petitioner from service of the second respondent is excessive and shockingly disproportionate to the charge framed and proved against him, while setting aside the impugned order of removal, I remit the matter back to the second respondent to pass appropriate punishment in the disciplinary proceedings initiated against the petitioner, which, in my considered opinion would be an order of compulsory retirement in order to meet the ends of justice, so that the petitioner and his family would not be deprived of their pensionary benefits. The order may be passed within thirty days from the date of receipt of a copy of this order. In which event, there shall be a further direction to settle the entire arrears of pension to the petitioner within thirty days thereafter. With the above directions, the writ petition is disposed of. No costs.

Index:Yes
Internet:Yes

KST.

To
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